## PUBLIC PROSECUTOR v. RAJANDRAN & ANOR.

[R.Cr. J. (Chan J.) April 1, 1985]

[Kuala Lumpur – Selangor Criminal Revision No. 9 of 1985]

*Criminal Law and Procedure – Sentence – Charges of house-breaking in order to commit theft – Principles of sentencing.*

*Penal Code, ss. 454 & 457 – Housebreaking and theft – sentences – Deterrence and retribution.*

In this case the respondents pleaded guilty to three charges of housebreaking and theft. They were sentenced each to (a) a fine of $1,500 or 8 months' imprisonment on the 1st charge; (b) a fine of $2,000 or 1 year's imprisonment on the 2nd charge; and (c) 1 day's imprisonment and a fine of $2,500 or 1 year's imprisonment on the third charge. The case was called up for revision.

Held: (1) burglary in the form of housebreaking is a very serious crime and offenders are not likely to be discouraged by sentences which do not involve loss of liberty. Where persistent burglars have deliberately set out to break into other people's houses to steal their possessions with the intention of disposing them, the kind of sentence which was passed in this case by the magistrate was not realistic;

(2) this was not a suitable cause for the kind of sentence which was imposed by the magistrate in this case and it is in the interest of the public that a custodial sentence be imposed that is, eighteen months' imprisonment for the first offence, two years' imprisonment for the second offence and two and a half year's imprisonment for the third offence, the sentences to run concurrently.

*Cases referred to:–*

(1) *Reg.* v. *Smith* (1978) 67 Cr. App. R. 211, 212.
(2) *Reg.* v. *Davies* (1978) 67 Cr. App. R. 207, 210.
(3) *Reg.* v. *Sargeant* (1974) 60 Cr. App. R. 74, 77.
(4) *Reg.* v. *Curran* (1973) 57 Cr. App R. 945, 947-948.

CRIMINAL REVISION.

*Gooi Soon Seng* (Deputy Public Prosecutor) for the Public Prosecutor.

1st respondent in person.

*G. Joseph* for the 2nd respondent.

*Cur. Adv. Vult.*

Chan J.: During the night of December 25, 1984, Christmas day, Mr. Satish Janardanan found his home at Jalan SS12/3C, Petaling Jaya broken into. The thieves gained entry by forcing open a window at the back of the house. They stole a Hitachi video recorder and a National radio. The property they stole was valued in all at about $900.

On January 19, 1985, Cik Maya bt. Abdul Aziz returned home at Lorong 5, 5/41 Petaling Jaya at 3.30 p.m. to find her home entered by burglars. She lost a National video recorder, a Minolta camera and six bottles of alcoholic drinks. In all the property stolen from Cik Maya was worth about $3,000.

On January 31, 1985, at around 12.45 p.m. a police patrol car received a call to proceed to a house at Lorong 5/10C Petaling Jaya where two male Indians were seen breaking into the house. They reached the place together with another patrol car. A constable from one of the patrol cars entered the house to investigate. He surprised the burglars one of whom was carrying two bags. He caught one of them; the one with the loot. In the bags were a Minolta camera, a Minolta flash attachment, a Solignor zoom lens, a pair of binoculars, a few items of jewellery and some money. The total value of that property was $3,430. Investigations revealed that the property belonged to Mr. Cheong Min Choong.

The other burglar managed to escape. But he left behind his motorcycle. The next morning he was arrested. He was Rajandran. The youth who was caught red-handed with the loot was Ragupathi. They admitted breaking into the homes of Mr. Janardanan and Cik Maya bt. Abdul Aziz.

They were subsequently brought before the magistrate at Petaling Jaya and on March 14, 1985 they pleaded guilty to the charges that were brought against them. For breaking into the homes of Cik Maya bt. Abdul Aziz and Mr. Cheong, they were each fined $1,500 in default eight months imprisonment and $2,000 in default a year's imprisonment respectively for offences under section 454 of the Penal Code. For breaking into the house of Mr. Janardanan, they were sentenced to a day's imprisonment and fined $2,500 in default a year's imprisonment for an offence under section 457, that is to say, housebreaking by night in order to commit theft.

Having regard to the fact that Ragupathi was caught red-handed with the loot in his hands, he had no option but to admit that he was the thief. As for Rajandran, he had left behind his motorcycle. He too had no choice but to admit that he was the thief.

Burglary in the form of housebreaking is a very serious crime indeed. When one considers the extent to which housebreaking is rife at the present

time then the courts inevitably must take a serious view. Because of the prevalence of this class of crime it must necessarily attract an immediate sentence of imprisonment. The public are entitled to be protected against burglars and they are not likely to be protected if lenient sentences are passed on such offenders. This is what Lawton L.J. said in *Reg.* v. *Smith*[1], at page 212:

"It may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. It is within the knowledge of this court, and the criminal statistics bear it out, that one of the growth criminal industries in this country is burglary. The particular type of burglary which is becoming very common indeed is breaking into other people's homes. On all sides members of the public, if they have not been burgled themselves, hear that their friends and relatives have been. This court knows that when there is a burglary in a house great distress is caused. Not only is there a loss of property but there is induced a feeling of insecurity. This court knows that when the householders are women they sometimes worry a great deal about what has happened to them. It has been said, and rightly said, that when a house has been burgled it never seems the same again."

Mr. Joseph has submitted that his client Ragupathi should be treated differently as he is just passed eighteen and he is concerned about the future of this young man. He has asked that he be given another chance. He has submitted that a custodial sentence would have a detrimental effect on the young man's future and that is also the recommendation of the probation officer who thought that the young man should be given another chance. But this court is concerned about the security of people's homes and it is with regard to that object that the courts have to decide what should be done in this class of cases. I have no hesitation in saying that in this case, as in nearly all cases of this kind, the proper sentence is a loss of liberty. What Mr. Joseph is in fact asking is that the fines imposed by the magistrate should be left undisturbed. I am unable to see how counsel could be so unrealistic as to suggest that offences of this gravity should be dealt with by a fine. Recommendations by probation officers can be valuable at times. But they are not likely to be of much value if they are not realistic. As was said by Lawton L.J. in *Reg.* v. *Smith*, at page 212:

"Unfortunately it is a matter of experience that nowadays a large number of housebreakers are adolescents and that when they break into houses, as in this case, the house is frequently turned upside-down. Adolescents have got to be discouraged from housebreaking and, in our judgment, they are not likely to be discouraged by sentences which do not involve loss of liberty."

Where persistent burglars have deliberately set out to break into other people's homes to steal their possessions with the intention of disposing them, the kind of sentence which was passed in this case by the magistrate was not realistic.

Let it be repeated: it may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. Burglary in the form of breaking into other people's homes is becoming very common indeed. On all sides members of the public, if they have not been burgled themselves hear that their friends and relatives have been. When there is a burglary in a house, it is frequently turned upside-down. Burglary in the form of housebreaking is a very serious crime indeed. Offenders are not likely to be discouraged by sentences which do not involve loss of liberty.

What ought to be the proper length of sentence? "A good deal depends upon the concept of what is necessary. There are of course the classical considerations relevant to all sentences: retribution, deterrence, prevention and rehabilitation." – said Lawton L.J. in *Reg.* v. *Davies*[2].

Again, in *Reg.* v. *Sargeant*[3] Lawton L.J. said:

"Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing."

In my judgment, two of those factors operate in a case of this kind; retribution and deterrence.

I will start with retribution. In *Reg.* v. *Sergeant*, this is what Lawton L.J. said about retribution at p.77:

"The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion."

And in *Reg.* v. *Davies*, the same judge said, at p.210:

"At one time it was fashionable to suggest that retribution ought not to enter into sentencing policy. That opinion

I think, is not held as strongly now as it was a few years ago. The reason is manifest: the courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the court's disapproval, on behalf of the community, of particular types of criminal conduct."

As I have already stressed in this judgment, burglary of private dwelling houses is a very grave crime indeed. The retribution element is very strong in this case. I am satisfied that in most cases fines are not sufficient punishment for this class of crime. The time has come when those who indulge in breaking into other people's homes to steal their possessions must expect to receive sentences of longest terms of imprisonment.

The next aspect is the element of deterrence. This is what Lawton L.J. said in *Sargeant* at page 77:

"Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences."

The deterrent element is very strong in the present case. As was said by Lawton L.J., burglars may very well be put off by deterrent sentences. Deterrent sentences are of considerable value where crime is premeditated.

From the record, it appears that neither Rajandran nor Ragupathi has ever been given a sentence of immediate imprisonment. "As a general rule it is undesirable that a first sentence of immediate imprisonment should be very long, disproportionate to the gravity of the offence and imposed ... for reasons of general deterrence, that is as a warning to others. The length of a first sentence is more reasonably determined by considerations of individual deterrence" said MacKenna J. in *Reg.* v. *Curran*[4]. It is right that they should receive substantial sentences for this class of crime but a sentencing court must be careful not to pass a sentence which is disproportionate to the gravity of the offence. It is undesirable that a first sentence of immediate imprisonment should be imposed for reasons of general, as opposed to individual, deterrence. But it might be said that a thief who is minded to break into other people's homes to steal their goods is not likely to be deterred by the fact that he may get three years rather than two years or six years rather than three years. The hearing of prison gates closing behind him is an experience which he does not want again. That is right, but what has got to be maintained is this; if persistent burglars are caught they will be punished and punished very severely. Therefore it must be made clear that anyone found deliberately breaking and entering homes for the purpose of stealing substantial quantities of goods for disposal must expect a severe sentence.

For the reasons I have indicated this was not a suitable case for the kind of sentence which was imposed by the magistrate in this case. It is in the interest of the public that I think a sentence of eighteen months' imprisonment is appropriate for the first offence under section 454 of the Penal Code *i.e.*, for the burglary committed at Cik Maya binti Abdul Aziz's house. For the second offence under the section *i.e.*, for the burglary committed at Mr. Cheong's house, I think a concurrent sentence of two years' imprisonment is appropriate. For the offence under section 457 of the Penal Code, I think a concurrent sentence of two and a half year's imprisonment is appropriate. The fines imposed by the magistrate are set aside. If the fines have been paid they are to be refunded. As for Rajandran, since he has been serving sentence because he was not able to pay the fines, his sentence should run from the date of his conviction.

*Order accordingly.*

Solicitors: *Lawrence, Joseph, Ghani, Mahalingam & Co.*

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## PALMCO HOLDINGS BHD. v. COMMISSIONER FOR LABOUR & ANOR.

**[O.C.J. (Mohamed Dzaiddin J.) January 28, 1985]**

**[Penang – Originating Summons No 515 of 1983]**

*Labour Law – Termination Benefits – Whether regulations ultra vires – Employment (Termination and Lay-off Benefits) Regulations, 1980, reg. 8 – Employment Act, 1955, s. 60J.*

In this case the plaintiff had bought over the business of a beach hotel from the Casuarina Beach Hotel Sdn. Bhd. It was agreed *inter alia* that the plaintiff would offer employment to all existing employees of the hotel except four persons who had passed the retirement age and were relatives of the family who were the former owners of the hotel. The four persons applied to the Director of Labour for termination benefits but the hearing of the application